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10/035,622	12/28/2001	Douglas Kerr Gessford	666-044	3852

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EXAMINER

HUYNH, LOUIS K

ART UNIT PAPER NUMBER

3721

DATE MAILED: 10/23/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/035,622

Applicant(s)

GESSFORD ET AL.

Examiner

Louis K. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 18-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I, claims 1-17 in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 18-35 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 2: "each" is indefinite for it is unclear "each" is the bundle or the article.

Claim 1, line 4: "such as" renders the claim indefinite for it is unclear whether or not the limitation following the phrase is a part of the claim.

Claim 1 appears to be incomplete for lacking a step of arranging the articles and the structural relationship between the product information or advertising indicia and the individual identification code on each of the articles, therefore, the locations of the product information or advertising indicia and the individual identification code of the article with respect to the bundle

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are unclear. Furthermore, since the articles have not been defined to be identical, it is unclear as to the relationship between each of the articles.

Claim 2, line 4: "the common surfaces of the articles bearing the individual identification codes" lacks proper antecedent basis. Note that the articles have not been arranged in such away that the individual identification codes be on the common surfaces.

Claim 4, lines 3-4: "the common surfaces of the articles" lacks proper antecedent basis. Note that the articles have not been arranged in such away that the individual identification codes can not be read when the label is attached to the common surfaces.

Claim 10 is indefinite for the sequence of the applying the bundle identification code to the bundle is unclear.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Schottle et al. (US 5,657,870).

Schottle discloses a method of forming a single, separately identifiable bundle (7) from a plurality of adjacent articles (K1, K2, K3) including the steps of: at least partially wrapping the articles with a transparent strip (5b) to form a bundle (7) such that the individual identification code (E1) on one of the articles (K1) is partial viewable while the transparent strip is

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substantially obscuring the individual identification code (E1) (column 2, line 65 – column 3, line 4).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5,887,717) in view of Blachon (US 4,827,114).

With respect to claims 1, 11 and 13, Anderson discloses a method of forming a single, separately identifiable bundle (10) from a plurality of adjacent articles including the steps of placing a cardboard (16) on the plurality of adjacent articles (14), wrapping the plurality of adjacent articles and the cardboard with a polyethylene film (18) and shrinking the film to form a single bundle (10) (Figure 2) such that the side walls of the containers where product information or advertising indicia are normally located are visible. The method of Anderson meets all of applicant's claimed subject matter but lacks the specific teaching of the individual identification codes on each of the articles being substantially obscured.

However, Blachon discloses a method of forming a single bundle from a plurality of adjacent articles wherein each of the plurality of adjacent articles has an individual identification code disposed on top (Figures 5, 10) that is to be scrambled in order to prevent the bundle from being misread as an individual article.

Since the method of Anderson is capable of forming a single, separately identifiable bundle from a plurality of adjacent articles having individual identification codes disposed on top of each of the articles as disclosed in the Blachon reference; therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the method of Anderson by having formed the single bundle from the plurality of adjacent articles having individual identification codes disposed on top of each of the articles, as taught by Blachon, so that the individual identification code on each of the articles can be covered by the cardboard.

With respect to claim 3, the modified method of Anderson meets all of applicant's claimed subject matter but lacks the specific teaching of a step of applying a bundle identification code to the bundle once formed. However, Blachon also discloses in the embodiment of Figure 13 a bundle formed from a plurality of adjacent articles wherein the individual identification codes (35) are scrambled and the external collective identification code (37) is attached to the wrapping material (38) and visible for scanning. Therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the method of Anderson by having applied a bundle identification code to the single bundle once formed, as taught by Blachon, so that the single bundle can be automatically identified as a unit.

8. Claims 1, 4, 5, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA (Applicant Admitted Prior Art) in view of Blachon (US 4,827,114) and further in view of Flaherty (US 4,669,611).

AAPA discloses a method of forming a bundle from a plurality of adjacent articles in order to facilitate distribution efficiency (page 2, line 16-page 4, line 1). The method including forming a sleeve from a transparent film made of polyethylene for wrapping around a plurality of adjacent articles (A); shrinking the sleeve to form the bundle (page 15, line 11-page 16, line 4), wherein each of the articles includes an individual identification code (IC) being arranged on a common surface of the bundle (Figure 1a). The AAPA method meets all of applicant's claimed subject matter but lacks the specific teaching of attaching a label having at least one relatively dark, patterned or opaque surface or layer in order to obscure the individual identification codes. However, Blachon discloses a method of forming a single bundle from a plurality of adjacent articles wherein the individual identification codes of the plurality of adjacent articles are arranged on a common surface (Figures 5, 10) and are covered with a patterned film (1) so that the individual identification codes (11) are scrambled in order to prevent the bundle from being misread as an individual article (column 1, lines 41-48). Therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the AAPA method by having used a patterned film in order to obscure the individual identification codes of the plurality of adjacent articles forming the bundle, as taught by Blachon, so that the bundle is prevented from being misread as an individual article.

The modified AAPA method meets all of applicant's claimed subject matter but lacks the specific teaching of the label being a self-adhesive with a backing. However, Flaherty discloses a method of covering an individual identification code in a bundle formed from a plurality of adjacent articles wherein the individual identification code of one of the article is covered with a label (14) having an opaque panel (24) in order to prevent the covered individual identification

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code from being read and wherein the label is provided with adhesive on the back so that it can be easily applied to the bundle. Therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have further modified the AAPA method by having provided the patterned film with adhesive, as taught by Flaherty, so that the patterned film could be easily applied to the bundle.

The modified AAPA method meets all of applicant's claimed subject matter but lacks the specific teaching of the label bearing a bundle identification code. However, Blachon teaches that the patterned film (31) can be covered with a collective code that is a directly printed labeling (column 4, lines 49-51). Therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have further modified the AAPA method by having printed the bundle identification code directly on the patterned label, as taught by Blachon, since the patterned film of Blachon is printable.

9. Claims 1, 6-11, 14, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA (Applicant Admitted Prior Art) in view of Blachon (US 4,827,114).

AAPA discloses a method of forming a bundle from a plurality of adjacent articles in order to facilitate distribution efficiency (page 2, line 16-page 4, line 1). The method including forming a sleeve from one or more transparent films made of polyethylene or polyvinyl chloride for wrapping around a plurality of adjacent articles (A); shrinking the sleeve to form the bundle (page 15, line 11-page 16, line 4), wherein each of the articles includes an individual identification code (IC) being arranged on a common surface of the bundle (Figure 1a). The AAPA method meets all of applicant's claimed subject matter but lacks the specific teaching of



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partially wrapping the bundle with a dark-colored, opaque or patterned film around the plurality of adjacent articles in order to obscure the individual identification codes. However, Blachon discloses a method of forming a single bundle from a plurality of adjacent articles wherein the individual identification codes of the plurality of adjacent articles are arranged on a common surface (Figures 5, 10) and are covered with a printed patterned film (1) so that the individual identification codes (11) are scrambled in order to prevent the bundle from being misread as an individual article (column 1, lines 41-48).

Since it well known in the art that polyethylene or polyvinyl chloride film can be modified to accept printing; therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the AAPA method by having provided one of the wrapping film with a printed patterned, as taught by Blachon, in order to obscure the individual identification codes of the plurality of adjacent articles forming the bundle so that the bundle is prevented from being misread as an individual article.

With respect to claims 8 and 9, the technique of shrink wrapping is well known in the art to include heating and cooling the sleeve.

With respect to claim 10, the modified AAPA method meets all of applicant's claimed subject matter but lacks the specific teaching of a step of applying a bundle identification code to the bundle. However, Blachon also discloses in the embodiment of Figure 13 a bundle formed from a plurality of adjacent articles wherein the individual identification codes (35) are scrambled and the external collective identification code (37) is attached to the wrapping material (38) and visible for scanning. Therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the method of

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Anderson by having applied a bundle identification code to the single bundle once formed, as taught by Blachon, so that the single bundle can be automatically identified as a unit.

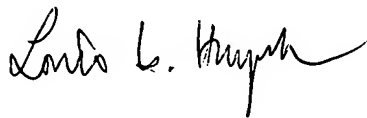
*Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure has been cited on form PTO-892 along with the applied prior art.

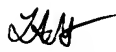
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is (703) 306-5694. The examiner can normally be reached on M-F from 9:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Louis K. Huynh  
Patent Examiner  
Art Unit 3721

LH   
October 20, 2003